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JAW

Patent Application  
Attorney Docket No. PC11032A

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Hon. Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on this 12th day of May, 2004.

By Mary C. Bickel  
(Signature of person mailing)  
Mary C. Bickel  
(Typed or printed name of person)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: Matthew Merrill Hayward, :  
et al.

APPLICATION NO.: 09/872,731 : Examiner: Liu, Hong  
FILING DATE: June 1, 2001 : Group Art Unit: 1624  
TITLE: HYGROMYCIN A DERIVATIVES :

Hon. Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

SUBMISSION OF DECLARATION

Sir:

Applicants enclose herein a Declaration of Dr. Robert G. Linde under 37 C.F.R. §1.131 to facilitate the examination of the present application.

REMARKS

Examiner Hong Liu is thanked for having graciously held a telephone interview with the undersigned on March 31, 2004.

The application, the Office Action of August 13, 2003 and the February 9, 2004 Response were discussed. It was agreed that a Declaration Under Rule 131 be filed to include the testing data which were attached to the February 9, 2004 Response.

CONCLUSION

In view of the foregoing, further and favorable consideration of the present application and the issuance of a Notice of Allowance are respectfully requested.

It is believed that no fee is required for the submission of the Declaration. However, if any fees are required, the examiner is authorized to charge such fees to our Deposit Account No. 16-1445.

DATE: 05/12/04

Lance Y. Liu  
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Attorney for the Applicants  
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Sir:

DECLARATION UNDER RULE §131

I, Robert G. Linde, declare that:

1. I have been working for Pfizer, Inc. since August 3, 1992, primarily in the area of discovering new antibiotics. My current title is Senior Principal Scientist.
2. I am a co-inventor of the above-identified application and I am aware that claims 1-8 stand rejected under 35 USC 103(a) as obvious over Hayward et al., WO 00/32616. I am also aware that claims 1-8 stand rejected under the judicially created doctrine of obvious-type double patenting over claims 1-8 and 13-16 of U.S. Patent No. 6,245,745, which is the U.S. counterpart of WO 00/32616.
3. Together with the other co-inventors, I unexpectedly find that compounds of formula 1 in the present application possess superior antibacterial activities in the presence of 50% human serum when "each  $R^3$  is independently selected from  $C_6-C_{10}$  aryl or 5-10 membered heteroaromatic, and the heteroaromatic and aryl moieties of the foregoing  $R^3$  groups are substituted by a  $-CHR^9NR^{11}R^{12}$  group and optionally substituted by 1 to 4  $R^4$  groups."
4. The testing data comparing compounds of the present invention and those of WO 00/32616 and/or U.S. Patent No. 6,245,745 are attached hereto as Exhibit 1. The testing data

show, for example, that the inhibitory activity to Stau1095 (*S. aureus* 1095) by compound CP-733798, which is claimed in the present application, is eight times more resistant to the presence of 50% human serum than compound CP-628295, a compound disclosed in WO 00/32616 and claimed in U.S. Patent No. 6,245,745. Other examples also show superior properties of the claimed compounds in the presence of 50% human serum. I was told that such superior properties are evidence of the nonobviousness of the claimed compounds over WO 00/32616 and/or U.S. Patent No. 6,245,745.

5. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

  
ROBERT G. LINDE

5/11/2007  
DATE